

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Section 150.06 (c)
Title 14, California Code of Regulations
Re: Commercial Take of Cabezon, Greenlings and Sheephead

- I. Date of Initial Statement of Reasons: September 22, 2003
- II. Date of Pre-Adoption Statement of Reasons: November 12, 2003
- III. Date of Final Statement of Reasons: December 8, 2003
- IV. Dates and Locations of Scheduled Hearings:

- (a) Notice Hearing: Date: August 29, 2003
Location: Santa Rosa, CA
- (b) Adoption Hearing: Date: December 4, 2003
Location: Sacramento, CA

- ## V. Update:

At its December 4, 2003 meeting in Sacramento, the Commission adopted the proposed changes to Section 150.06 (c), Title 14, CCR, which align the commercial cabezon, greenling and sheephead (CGS) fishing seasons so that open and closed periods match the shallow and deeper nearshore rockfish commercial rockfish seasons in each geographic region. This strategy of aligning the CGS seasons with that of nearshore rockfish has been a consistent practice of the Commission in regulatory actions since 2002, based on concerns for bycatch of rockfish which would occur in targeted CGS fisheries if rockfish were prohibited from retention when CGS fisheries are open. The Commission also approved the Department's recommendation to maintain a two-month closure period during March and April for the CGS fishery in the area from 40°10' N. lat. to the California/Oregon border.

- ## VI. Summary of Primary Considerations Raised in Opposition and in Support:

One oral public comment was received on the proposed regulation change at the adoption hearing. Mr. Kenyon Hensel, a commercial nearshore fisherman from Crescent City, California, supported alignment of the commercial CGS seasons with seasons for rockfish, although he cautioned against “sector-slaving” commercial and recreational open and closed periods so that both sport and

commercial fishery sectors are always open or closed at the same time within a geographic area. This management strategy has been supported in the federal arena based on enforcement concerns.

One written comment was submitted by Janet and Dick Young of Forest Ranch, CA, supporting equal 10-month fishing seasons in all areas, so that all permittees are given equal time on the water. While not a part of this regulatory action, the Youngs also expressed support for trip limits for CGS, similar to those in place for rockfish, so that CGS fishing seasons would span later into the year. The Commission approved trip limits for these species in August 2003, which will be effective for the 2004 fishing season.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street
Sacramento, CA 95814

VIII. Location of Department files:

Department of Fish and Game
Marine Region
1416 Ninth Street
Sacramento, CA 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

Two options on how to align the commercial seasons for CGS in the northern area to better conform to new federally-established seasons for nearshore rockfish are prepared for the Commission's consideration, and are noticed as part of this regulatory package.

(b) No Change Alternative:

If the proposed regulatory amendments are not adopted, there will not be enforceable commercial CGS closure periods in any area of the state. As a result, commercial fishing for CGS would take place during periods when rockfish are closed, which would result in bycatch and mortality of nearshore rockfish.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

(a) Significant Adverse Economic Impact on Businesses, Including the Ability of California Businessmen to Compete with Business in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Each permittee, buyer, and processor is considered a small business.

This regulatory action simply seeks to shift various months in which commercial CGS fishing activities may or may not occur, but the amount of allowable fishing time for each permittee in the southern and central areas of the state will not change as a result of the proposed regulations. For the northern area, if the Commission selects to allow for a 12-month CGS fishery instead of the currently authorized 10-month season, commercial nearshore fishermen in that area might receive some minor benefit from the opportunity to increase their time on the water. However, the degree of this benefit cannot be determined due to inability to project weather and fishing conditions or the competing impact of other regulations such as trip limits and harvest guidelines, which are likely to have a greater overall effect on a permittee's fishing success.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Updated Informative Digest/Policy Statement Overview

Existing language of Section 150.06 (c), Title 14, California Code of Regulations (CCR), states that commercial seasons for cabezon, greenlings and sheephead (CGS) for all areas of the state are to be set annually in accordance with nearshore rockfish seasons established in Federal regulations for the area from 40°10' N. lat. (near Cape Mendocino) to the to the US/Mexican border. In 2003, commercial nearshore rockfish regulations for this area allowed fishing for 10 months of the year, with the two month closure period set as the months of March and April (Table 1).

At the September 2003 Pacific Fishery Management Council meeting, actions were taken that will result in commercial nearshore rockfish seasons for 2004 to be open in some areas of the state during some months, and closed in others. Therefore, from the regulations (Section 150.06, Title 14, CCR), it is not clear whether commercial CGS seasons are in fact open or closed. From the geographic area from 34°27' N. lat. (Point Conception) to the US/Mexican border (referred to as the southern area), commercial shallow and deeper nearshore rockfish fisheries are closed in January and February, while in the area from 34°27' N. lat. to 40°10' N. lat. (referred to as the central area); the closure period is in March and April as in 2003.

Since the closure periods are no longer consistent for the region from 40°10' N. lat. to the US/Mexican border, the existing Title 14 language must be changed to specify that the CGS commercial season is to be consistent with shallow and deeper nearshore rockfish commercial rockfish seasons in each particular geographic region. This strategy of aligning the CGS seasons with that of nearshore rockfish has been a consistent practice of the Fish and Game Commission in regulatory actions since 2002, based on concerns for bycatch of rockfish which would occur in targeted CGS fisheries if rockfish were prohibited from retention at that time.

Additionally, the proposed regulation changes require the Commission to determine whether the commercial CGS fishery shall have a closure period in the area from 40°10' N. lat. to the California/Oregon border (referred to as the northern area). This area does not have a closure period for nearshore rockfish. However, in 2003, the Commission adopted regulations which authorized commercial CGS fishing for a length of 10 months throughout the state, so that one area would not have more opportunity than another.

Therefore, the Commission may select either not to enact a CGS closure in this area, or to enact a closure for the months of March and April, which would be consistent with the 2-month closure in the central area which is immediately adjacent. While the first option would align the CGS seasons with rockfish in the northern area, it would allow the northern fishery additional fishing opportunity for

CGS compared to the fishery to the south. Under the second alternative, fishing for CGS would be closed during March and April when fishing would be allowed for nearshore rockfish, and all areas of the state would have equal time on the water to access CGS fisheries.

TABLE 1

2003 Commercial CGS and Nearshore Rockfish Regulations

Area	Species	Closure Period
40°10' N. lat (near Cape Mendocino) to the Oregon Border	Cabazon/ Greenlings/Sheephead	March-April
	Minor Nearshore Rockfish	None
40°10' N. lat (near Cape Mendocino) to Pt. Conception (34°27' N. lat)	Cabazon/ Greenlings/Sheephead	March-April
	Shallow and Deeper Nearshore Rockfish	March-April
Pt. Conception (34°27' N. lat) to the U.S.-Mexico border	Cabazon/ Greenlings/Sheephead	March-April
	Shallow and Deeper Nearshore Rockfish	March-April

2004 Commercial CGS and Nearshore Rockfish Regulations

Area	Species	Closure Period
40°10' N. lat (near Cape Mendocino) to the Oregon Border	Cabazon/ Greenlings/Sheephead	EITHER [March-April] OR [None]
	Minor Nearshore Rockfish	None
40°10' N. lat (near Cape Mendocino) to Pt. Conception (34°27' N. lat)	Cabazon/ Greenlings/Sheephead	March-April
	Shallow and Deeper Nearshore Rockfish	March-April
Pt. Conception (34°27' N. lat) to the U.S.-Mexico border	Cabazon/ Greenlings/Sheephead	January-February
	Shallow and Deeper Nearshore Rockfish	January-February

The Commission adopted the proposed changes to Section 150.06 (c), Title 14, CCR, which will align the commercial cabazon, greenling and sheephead (CGS) fishing seasons so that open and closed periods match

the shallow and deeper nearshore rockfish commercial rockfish seasons in each geographic region. This strategy of aligning the CGS seasons with that of nearshore rockfish has been a consistent practice of the Fish and Game Commission in regulatory actions since 2002, based on concerns for bycatch of rockfish which would occur in targeted CGS fisheries if rockfish were prohibited from retention at that time. The Commission also approved the Department's recommendation to maintain a two-month closure period during March and April for the CGS fishery in the area from 40°10' N. lat. to the California/Oregon border. The Commission took these actions at its December 4, 2003 meeting in Sacramento.

Regulatory Language

Section 150.06 (c) is amended to read:

150.06. Management Areas Defined; Closure Periods Defined.

~~(c) Statewide commercial seasonal closure periods (excluding in-season closures enacted due to quota attainment) for sheephead, cabezon, and greenlings of the genus Hexagrammos shall apply consistent with federal seasonal closures for minor nearshore rockfishes as noticed in the Federal Register by the National Marine Fisheries Service, or defined in Title 50, Code of Federal Regulations (CFR), Parts 600 and 660, for the geographic area from 40° 10' N. lat. (near Cape Mendocino, Humboldt County) south to the U.S.-Mexico border. Seasonal closures for commercial sheephead, cabezon, and greenlings of the genus Hexagrammos:~~

(1) For ocean waters between 42°00' N. lat. (the Oregon/California border) and 40°10' N. lat. (near Cape Mendocino, Humboldt County), closed time periods for sheephead, cabezon, and greenlings of the genus Hexagrammos shall be defined as the time periods closed to commercial take of shallow and deeper nearshore rockfishes for ocean waters between 40°10' N. lat. (near Cape Mendocino) and 34°27' N. lat. (at Point Conception, Santa Barbara County), noticed in the Federal Register by the National Marine Fisheries Service, or defined in Title 50, Code of Federal Regulations (CFR), Parts 600 and 660. Time periods closed to the commercial take of shallow or deeper nearshore rockfish fisheries enacted in-season due to quota attainment do not apply.

(2) For ocean waters between 40°10' N. lat. (near Cape Mendocino) and 34°27' N. lat. (at Point Conception, Santa Barbara County), closed time periods for sheephead, cabezon, and greenlings of the genus Hexagrammos shall be defined as the time periods closed to commercial take of shallow and deeper nearshore rockfishes in this area noticed in the Federal Register by the National Marine Fisheries Service, or defined in Title 50, Code of Federal Regulations (CFR), Parts 600 and 660. Time periods closed to the commercial take of shallow or deeper nearshore rockfish fisheries enacted in-season due to quota attainment do not apply.

(3) For ocean waters between 34°27' N. lat. (at Point Conception, Santa Barbara County) and the U.S./Mexico border, closed time periods for sheephead, cabezon, and greenlings of the genus Hexagrammos shall be defined as the time periods closed to commercial take of shallow and deeper nearshore rockfishes in this area noticed in the Federal Register by the National Marine Fisheries Service, or defined in Title 50, Code of Federal Regulations (CFR), Parts 600 and 660. Time periods closed to the commercial take of shallow or deeper nearshore rockfish fisheries enacted in-season due to quota attainment do not apply.

NOTE:

Authority cited: Sections 7071 and 8587.1, Fish and Game Code. Reference: Sections 7071, 7652, 8585.5 and 8587.1, Fish and Game Code.